United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

74-1860

~~74-1869~~

To be argued by
STEPHEN BARASCH

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1869

P/S

UNITED STATES OF AMERICA,
Appellee,

—v.—

GEORGE STOFSKY, AL GOLD, CHARLES HOFF and CLIFFORD LAGEOLES,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF ON BEHALF OF APPELLANTS CHARLES HOFF and CLIFFORD LAGEOLES

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Preliminary Statement

There are two briefs filed with respect to this appeal. The first, Docket Number 74-1860, is the brief on behalf of appellants George Stofsky and Al Gold. This brief is submitted on behalf of the two appellants Charles Hoff and Clifford Lageoles. The trial in this matter was conducted as a unified defense and all four appellants were represented by the same counsel. Thus, many of the issues raised during the trial affected the interests of all four appellants. For example, the lengthy argument in the Stofsky-Gold brief concerning the fact there was no evidence of a single conspiracy as charged in Count One is precisely the same issue applicable to the appellants Hoff and Lageoles. Rather than repeat and simply reprint the identical arguments, the appellants Hoff and Lageoles join with the appellants Stofsky and Gold in the following points:

Point I —Defendants' motion for a new trial should have been granted.

Point II —There was no evidence of a single conspiracy as charged in Count One.

Point III —The erroneous rulings of the trial court require a new trial.

Point IVa—Defendants' conviction for tax evasion should be reversed for failure to provide defendants a conference with government officials.

Point Five and Six are not applicable to appellants Hoff and Lageoles and we do not join in their submission.

Also, since the brief for the appellants Stofsky and Gold was to be of considerably more pages than permitted by this Court, it was agreed by counsel, and this Court, that the brief of Hoff and Lageoles will rely upon the Statement of Facts set forth in the Stofsky and Gold brief. In view of that commitment we do rely upon that Statement of Facts, which has been reviewed, and is acceptable. Secondly, their Preliminary Statement sets forth the prior proceedings in this matter, together with the pertinent material involving the appellants Hoff and Lageoles.

In substance, as a result of a trial conducted in the United States District Court for the Southern District of New York, commencing on February 11, 1974 before the Honorable Lawrence W. Pierce, United States District Court Judge, pursuant to the indictment 73 Cr. 614, the jury returned a verdict of guilty against the appellants Hoff and Lageoles. On May 31, 1974 the Court sentenced the appellants Hoff and Lageoles as follows: Hoff was sentenced to a total term of imprisonment of three years, and a fine of $2,000 on Count 27 and $1,000 on each of Counts 1, 6, 7 and 9-12, 18-20, for a total committed fine of

$12,000.00. Lageoles was sentenced to a total term of imprisonment of two years, but execution of his sentence was suspended and he was placed on probation for a period of two years. Additionally, he was fined in the sum of $500 on Count 1 and $250 on each of Counts 6, 7, 9-12 for a total committed fine of $2,000.00.

ARGUMENT

POINT I

The perjury committed by the only Government witness to implicate the appellants, Charles Hoff and Clifford Lageoles, requires reversal of their convictions.

A. The Charges in the Indictment and the Verdicts Against these Two Appellants

The indictment in Count One charges a conspiracy involving all four appellants to commit certain offenses in violation of Section 371, Title 18, United States Code (A. 10a).* This charge, however, alleged two different objectives of the conspiracy. The allegations of dual objectives caused the trial judge concern, and eventually led to the necessity for a special verdict which will be discussed in more detail hereafter.

The dual objectives charged were a conspiracy to violate Title 29, United States Code, Section 186(b). This objective dealt with the allegation that all four appellants, as union officials, had conspired to receive payments from manufacturers in violation of the Taft-Hartley Act. All four appellants were also charged with substantive violations in various counts, of receiving payments in violation

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* References preceded by "A" refer to the Joint Appendix, Docket No. 74-1860, 74-1869; "T" to the transcript of trial; "DX" to a defense exhibit.

of Section 186(b). The second objective charged was a conspiracy to violate Title 18, United States Code, Section 1962(c). This dealt with the allegation that all four appellants had, by virtue of receiving payments in violation of Section 186(b), engaged in a pattern of racketeering activity. However, with regard to the substantive count charging a Section 1962(c) violation (Count Twenty-three), only co-appellants Stofsky and Gold were so charged.

a. The Verdict on Count One

The jury considered Count One and returned a verdict of guilty against all four appellants. Defense counsel, government counsel, and the court, were now placed in a confused situation because they had no way of determining whether the jury found all defendants guilty of both objectives or of only one, and then which one. Obviously, the pending punishment to be considered by the Court differed as to the conspiracy to violate the misdemeanor Taft-Hartley provisions, and the felony anti-racketeering statute, also termed the Crime Control Act. Further difficulty arose because the latter statute was enacted on October 15, 1970, and the Court charged the jury they would have to find some conspiratorial acts committed after that date (A. 645a). The only relevant acts committed after that date involved the testimony of Daniel Grossman, and his alleged payoffs in connection with the operations of his fur manufacturing corporations (A. 647a). Defense counsel argued that as to the appellant Lageoles the jury could not consider that portion of Count One that dealt with the anti-racketeering objective because Lageoles had never been connected with the Grossman situation in any way whatsoever. As to the appellant Hoff, a somewhat similar situation existed because, while he had met with Grossman, and was the Business Agent for Grossman's firms, as well as having discussed union-management problems with Grossman, all of Hoff's acts were of an innocent nature and, thus, the jury should not consider Hoff's acts as any part of a conspiracy to violate Section 1962(c). However, there were these discussions and meetings be-

tween Grossman and Hoff during the relevant periods covered in the indictment, and from the trial judge's viewpoint the jury could properly consider whether Hoff's acts were conspiratorial in nature with respect to anti-racketeering objective charged in the First Count. The trial judge also took the position that the acts of Lageoles could also be considered by the jury under all of Count One.

Following the verdict of guilty under Count One, the trial judge, in order to resolve the above issues, ruled that a special verdict would be in order (A. 693a). The judge requested of the jury to decide, as to each of the four defendants, ". . . did you find him to have conspired to violate the second objective, that is, the Crime Control Act objective?" (A. 694a). The jury required additional instructions about the Act, and after further deliberations found that the appellants Hoff and Lageoles had not conspired to commit the second objective, that is, to violate the Crime Control Act (A. 696a).

This jury finding is highly significant because it demonstrates precisely what evidence and testimony the jury considered in reaching their verdict, not only under Count One, that the appellants Hoff and Lageoles had only conspired to receive payments in violation of the Taft-Hartley Act, but also as to their verdict on the substantive counts. In both of these areas the only testimony implicating either the appellant Hoff or Lageoles in allegedly accepting payoffs, or conspiring to do so, was that of the key government witness, the admitted perjurer, Jack Glasser. No one else during the course of the trial indicated that either of these two appellants did, or may have, accepted payments. Nor, was there any corroboration of Glasser, either by testimony or document, that either of these two appellants accepted money from manufacturers, or conspired to do so. The convictions of these two appellants, both as to Count One, and the substantive counts, rests on the belief of the jury in the trustworthiness and reliability of the testimony of Jack Glasser.

b. The Substantive Counts

The appellant Hoff was convicted of the following substantive counts—Six, Seven, Nine, Ten, Eleven, Twelve, Eighteen, Nineteen, Twenty, all dealing with alleged payments in violation of the Taft-Hartley Act, and Twenty-seven charging income tax evasion, in violation of Title 26, United States Code, Section 7201. The appellant Lageoles was convicted under counts—Six, Seven, Nine, Ten, Eleven and Twelve. These counts may be divided and analyzed as follows:

(1) The Sherman Brothers Counts

Testimony relating to the fur manufacturing firm of Sherman Brothers was considered with respect to the appellant Hoff under Counts One, Six, Seven and Twenty-seven. Counts Six and Seven relate to the allegation the appellants Hoff and Lageoles received two payments of $125.00 each during 1969 from Jack Glasser, who in turn, had received the money from Sam Sherman. Sam Sherman did not testify in this case, and was not called by the government, allegedly because he was under indictment and the government did not want to jeopardize the pending Taft-Hartley case against Sam Sherman (T. 1703). However, this argument appears superfluous when it is noted the government resorted to the use of immunity tactic whenever it served its purpose during the trial. The granting of the use of immunity to Sam Sherman, as well as the other manufacturers under indictment, could not have conceivably hurt a pending indictment, where the evidence against the various manufacturers had already been presented to the grand jury. Rather, it is apparent that the reason Sherman, and the other manufacturers, were not granted use of immunity, was that they could not support or corroborate the government's case. Defense counsel, on the other hand, were precluded from calling Sherman, and the other manufacturers, because they were under indictment, and their

counsel had advised they would invoke their Fifth Amendment privilege if called by the defense. Thus, with respect to the alleged Sherman payoffs, as well as the evidence relating to other manufacturers, from whom Hoff and Lageoles were alleged to have received payoffs, the government, by its own actions, limited their case to the testimony of Jack Glasser. The appellants Stofsky and Gold pursue this argument of unavailable witnesses in their brief, Docket No. 74-1860, at page 66 and, as noted, these appellants join them. For our purposes, it is important to note that the government rested its entire case of alleged payoffs to Hoff and Lageoles on the word of Jack Glasser. In sum, Glasser testified he had a conversation with Ben Sherman in the summer of 1967, who asked for permission to contract work out of his shop. Glasser then stated he met with Hoff, and he obtained permission from Hoff for Sherman to so operate. Glasser testified he received from Sherman two payments of $500.00 each, one in July (Count Six) another in December of 1969 (Count Seven). These payments were divided four ways according to Glasser with Glasser, Hoff, Lageoles as well as the appellant Gold, each receiving one-quarter of the money (A. 56a).

There are a number of points that arise with respect to the Sherman Brothers matter which indicate Glasser is not telling the truth about these alleged payoffs by him to these appellants. These points are entirely separate, and distinct from Glasser's admitted perjury which will be considered in detail hereafter.

As mentioned above, by virtue of the government's actions defense counsel could not call Sam Sherman as a witness. Following this trial, Sherman entered a plea of guilty of making these payments to Jack Glasser, and at the time of the plea, and at a time when it was most important for him to be truthful with the court, Sherman advised he never knew what Glasser did with the money

he gave to him. An obvious question arises as to why Glasser did not tell Sherman. It was a small union, in a small area, and there should not have been much guess work as to which union officials might be involved. An apparent reason would be that Glasser and the union official agreed that in order to protect the union official, his identity would not be disclosed. However, if that were the fact, Glasser would have so testified, and revealed his agreement or understanding with the union official. The only reasonable explanation why Sherman, as well as Harry Hessel, and the other manufacturers did not know where the money was going, is that, as Glasser now admits, he pocketed large sums of money given to him by various manufacturers, and, more importantly, accepting the defense theory that he pocketed all the money, then he could not tell the various manufacturers of the identity of the union official for fear the manufacturers and officials might meet, and learn no money was passed on by Glasser.

Other inconsistencies crop up in Glasser's testimony, such as, the fact Ben Sherman was dead some eight months prior to the alleged conversation Glasser was suppose to have had with him (A. 108a; DXAO). Also, Glasser testified that ". . . at no time during all of these transactions did one (defendant) know the other was involved. Each one was separate" (A. 65a). This testimony is unbelievable, if there was, in fact, any such scheme. The government argues, and the trial judge accepted in its decision rejecting a new trial, that this was a close knit union, in a small physical area, where union officials and manufacturers alike knew pretty much what was going on in the industry. Applying this theory, and recognizing also there isn't any logical reason why the defendants should not know of each other's involvement, if in fact, there was any, then why does Glasser testify in this manner? One reasonable inference, recognizing Glasser has engaged in a pattern of lies during this case, is that by so testifying he keeps

his testimony on a one to one basis, and avoids putting two or more appellants together so that jointly they can contradict him.

Lastly, on this issue, and undermining Glasser's testimony, is the fact that legitimate union action was taken against Sherman Brothers on more than one occasion. A union complaint was filed in 1968, and more importantly, while Lageoles, who is allegedly on the payroll of Sherman, and allegedly knows it, because Glasser whispers in his ear "Sherman" whenever he transfers a payment, filed two complaints against the Sherman firm for contracting and falsifying books in August 1970 (A. 140a, 451a). Such action by Lageoles would have been foolhardy since Sherman may have complained, as he did, leading to exposure for Lageoles. Glasser's testimony is suspect long before there is definite proof of his perjury.

(2) The Harry Hessel Counts

Counts Nine, Ten, Eleven and Twelve under which both Hoff and Lageoles stand convicted, again, solely relate to the testimony of Jack Glasser. Harry Hessel was engaged in the production of imitation furs, and Glasser testified Hessel approached him in 1967 for permission to contract work. Glasser stated he obtained Hoff's permission, and under Counts Nine through Twelve, the testimony of Glasser was that Hessel gave Glasser a total of $2,000.00 during 1969, and this amount was divided into four payments, with appellants Hoff and Lageoles each allegedly receiving a total of $500.00 (A. 650).

None of the testimony of Glasser on this issue is corroborated in any way by either a witness or a document. Hessel, as with Sherman, was under indictment at the time of trial, and not granted use immunity by the government. Hessel, at the time he entered a guilty plea involving the payments to Glasser, advised the court he did not know what Glasser did with the money.

Furthermore, the fact Hessel was partly unionized at all by the furriers union, when he could have turned to the more advantageous union contract provisions with the International Ladies Garment Workers Union, indicates a dedicated effort by the appellants to afford more jobs to their members (A. 445a). It is appropriate to consider, at this juncture, the defense case indicating the long dedicated service these appellants demonstrated over the years in maintaining their union, as well as their unblemished personal lives. Even after conviction, in the letters sent on their behalf to the trial court, they were stoutly supported by both business associates and management, as well as their union associates, and those who knew them personally. Their backgrounds are in sharp contrast to that of Jack Glasser as revealed in the trial record, which will be more fully considered hereafter.

(3) The Karl Schwartzbaum Counts

Counts Eighteen, Nineteen and Twenty relate to Charles Hoff alone, but again, only as testified to by Jack Glasser. Schwartzbaum was engaged in fur manufacturing, and Glasser testified he was approached to obtain a concession from the union for certain work he wished to do. Glasser stated he obtained the go ahead from Hoff, whereby Schwartzbaum agreed to pay $900.00 a year, and Counts Eighteen through Twenty relate to the alleged receipt by Hoff of $150.00, on three occasions, from Glasser during 1969 (A. 77a).

The testimony of Glasser as to these payments and conversations are not corroborated in any manner. Schwartzbaum was not called as a witness, again, being under indictment during this trial, and the government did not see fit to afford him use immunity.

(4) The Jury's Verdict on the Substantive Counts

In reaching a verdict on the substantive Counts Six, Seven, Nine, Ten, Eleven, Twelve, Eighteen, Nineteen, Twenty and Twenty-seven, and this last count will be mentioned later, the jury had before it only the testimony of Jack Glasser. As detailed above, his testimony supported these counts, and the jury would have had to accept Glasser's testimony as truthful and reliable beyond a reasonable doubt, in order to convict. Without being aware of the substantial nature of Glasser's perjury, the jury had a great deal of difficulty in accepting Glasser's testimony in support of these counts. They requested that Glasser's testimony of Hessel and Schwartzbaum payments be read to them (T. 1993). Following this, the jury could not reach a verdict on these counts (A. 687a). The judge thereupon gave them a modified Allen Charge (A. 689a), and the jury finally reached their verdict. Having experienced that much difficulty, and doubt, as to whether Glasser's testimony supported these counts, it is apparent they would have rejected his testimony had they been aware of the perjury Glasser had committed throughout his testimony.

(5) Count One—The Conspiracy Count

The sum total of evidence offered against Hoff and Lageoles on the conspiracy count, involving the alleged acceptance of payoffs from manufacturers, consisted of the Sherman and Hessel matters as to both, and the Schwartzbaum incident as to Hoff. In addition, there was testimony, again, solely by Jack Glasser, that with respect to the firm of Breslin Baker, the latter gave Glasser $1,000.00 which he divided with Hoff, to assist Baker in permitting him to contract work (A. 71a). Nothing was offered by the government to corroborate Glasser on these alleged Baker payments.

The only other evidence offered against the appellant Lageoles was testified to by Jack Glasser, and it involved an alleged $100.00 payment by Glasser in 1969, in connection

with a Sherman Brothers situation (A. 57a). As mentioned above, it is the same Lageoles that filed two complaints against Sherman in August of 1970.

Secondly, Glasser testified he gave Lageoles $125.00 relating to a Harry Hessel shop, but nothing was offered to corroborate this bald statement (A. 67a).

Significant, as to all of these alleged payments, is that when added together, Glasser places an amount of $975.00 in the hands of Lageoles over the course of this entire conspiracy. Contrasted with this sum is the thousands of dollars Glasser now admits he pocketed over this same period of time, as well as the fact that Glasser is not to be believed when he testified as to what he did with any of these monies he received from any manufacturers.

(6) The Tax Evasion Count

While Hoff was convicted of misdemeanor violations in allegedly accepting these payments, the government elevated these charges, under Count Twenty-seven, to a felony stature by charging tax evasion for the year 1969 in failing to report and pay the tax on these payments. The government tried to do the same thing under Count Thirty-one for the year 1970, but there wasn't any proof of any payments to Hoff, and the count was dismissed.

The sum total of the payments allegedly received by Hoff under this count, as outlined above, during the substantive and conspiracy count discussion, was $1,700.00. The tax allegedly evaded was $523.60 (T. 1033).

All of the unreported income of $1,700.00 was placed in Hoff's hands by the witness Glasser. As mentioned above, Glasser's testimony is of such a perjurious nature, that it should not support a conviction and, thus, this tax count should fall, as should the other charges involving Glasser's word implicating Hoff and Lageoles.

B. Where the Appellants Hoff and Lageoles Are Convicted Solely on the Word of a Witness, who Admittedly Perjured Himself on Material Matters During the Trial, Their Convictions Cannot be Upheld

The perjury committed by Jack Glasser during the trial concerned relevant and material matters, and clearly as to the appellants Hoff and Lageoles, denied them not only a fair trial, but also, caused their convictions. An examination of Glasser's perjurious utterances, going to the heart of the defense of Hoff and Lageoles, supports this assertion. Basically, these two appellants raised the defense that any money Glasser alleged he received from any manufacturer was not passed on to either of them. Glasser's perjury successfully undermined this defense by establishing, during trial, that the monies in his savings account were from inheritances, and not from payoffs. We now find this is not true, but that a large part of his wealth, how much is uncertain, because only the government has had access to Glasser, is attributable to payments made to him by manufacturers, which he retained.

Moreover, the effects of his perjury, and the pollution of the trial, did not end when Glasser left the witness stand. Rather, it continued to taint the entire trial right up to the rendering of the verdict. The effects of the perjury were many fold. The perjury effectively cut off defenses and arguments defense counsel would have set forth if the true facts were known. The perjury presented the government with theories and arguments in support of conviction it was not entitled to make and, the perjury caused the trial judge to chrge the jury in a manner that did not truly represent the facts underlining the alleged conspiracy, or the true position of the sole government witness implicating Hoff and Lageoles, that is, Jack Glasser. A fundamental issue, going to the core of our

judicial system, is whether such tainted testimony will be permitted to uphold the convictions of these two appellants.

In considering Glasser, it is appropriate to resort to all the proceedings had herein, to first determine who and what this man is, and then whether his testimony can support these convictions. Based on a fair reading of the record, at the minimum, Glasser is a criminal, that is, a shake-down artist who took money from manufacturers for years; that he served his Association with dishonor for probably the entire time he was an employee in a trusted position; that he is a perjurer; that he conspired with his wife to give false testimony during the trial concerning their inheritance as the basis for their wealth; that he engaged in criminal tax evasion throughout the years; that he is a civil tax cheat; that he engaged in the obstruction of justice in obviously counselling his wife to lie to support his own lies; and finally, that he is the type of individual who would testify falsely under oath recognizing his false testimony may result in a conviction of those standing trial. We start with that.

An examination of the perjurious utterances demonstrates how they were responsible for the conviction of the appellants. The perjury of Glasser was decisive in convicting the appellants as can be seen under the following breakdown of his testimony:

(1) He testified he acquired his savings of $120,000.00 through inheritance by his wife in the 1940's (A. 163). The defense of Hoff and Lageoles was that they never received any payoffs from Glasser, and any monies Glasser received he kept, and this accounted for his wealth. Glasser stifled this defense by his perjury, and the jury was never aware of the true facts, that he had pocketed thousands of dollars during 1967 to 1970.

(2) Glasser did have the jury believe the payments he kept were of such small amounts, that he simply spent the

money, and did not deposit any of it (A. 167a). This explanation to the jury justified their acceptance of his version of the fact his savings accounts did not reflect any cash payments from manufacturers. However, this explantion was completely false and those payments were deposited. Had Glasser testified truthfully about these cash deposits, then Hoff and Lageoles could have argued to the jury that this vast cash hoard indicated such greed and criminal activity, that such a person would likely keep every penny he was given.

(3) His wife testified and corroborated her husband that their wealth was the result of a family inheritance (A. 179a). This was perjurious since a substantial portion of this wealth, totalling at least $57,000, was acquired by her husband during 1967-1970. But, more importantly, her testimony was devastating to the positions of Hoff and Lageoles in the eyes of the jury. She was the one witness who supported Jack Glasser, and who provided him with credibility. No doubt, in weighing the word of Jack Glasser the jury considered her supporting testimony. Her perjury, certainly as to Hoff and Lageoles, is far more than simply being perjurious. It may well have provided the crutch the jury needed to accept her husband's testimony. Another aspect of her testimony, putting aside her perjurious utterances, is whether her collusion with her husband to dovetail her lies with his, doesn't further taint this case to the point that the testimony of the Glassers' cannot support any conviction.

(4) The perjury of both Glassers also permitted the Assistant United States Attorney to distort the true fact picture, and mislead the jury, agreed unknowingly, on a vital matter. The defense had introduced a document, a probate record, indicating whatever inheritance the Glassers may have had, in the 1940's, that it totalled about $4,000.00 (DX AM, AN). Defense counsel argued that the monies the Glassers had in 1972 could not have come from the

inheritance. This we now find to be true, and these facts should have been presented in that light to the jury. However, by virtue of their perjury, the Assistant United States Attorney was able to deny that defense contention, and maintain that the Glasser wealth was the product of inheritance. The Assistant overcame the probate record, and gave support to the Glasser lies, in the following portion of his summation:

> "Now, I don't want to—it skipped my mind. I don't want to pass without mentioning the documents which the defendants put in about the inheritance with respect to Mr. and Mrs. Glasser. They substantially undermine what Mr. Glasser said at trial to this extent, to the extent that they reflect what passed at the time of death in that fashion. They say nothing about what may have passed as a result of gifts prior thereto, what trusts may have been in existence. Nothing about that. They say nothing about what the moneys were received in violation of the estate tax laws under the table by Mr. and Mrs. Glasser, or directly Mrs. Glasser. They say nothing about that. They give you an incomplete picture of documents prepared by a lawyer. You can look on the face of them. They are exhibits prepared by a lawyer, affidavits prepared by a lawyer if you ever signed one prepared by a lawyer, you will know what they look like. They give you at the very best a marginal look of what took place at that time. Against that you have to contrast the inference that Mr. Abramowitz and the defendants would have you draw from that, which is that beginning with Glasser's involvement in the market in about 19 whatever it was, 1933, '36, until the time he left in '70 he was raking in these moneys from these just not too bright manufacturers who were being duped or extorted by Mr. Glasser for all those years. That's the alternative that Mr. Abramowitz would offer you." (A. 628a).

Glasser's perjury permitted the government to make this now obvious fallacious argument. As mentioned above, the pollution of the case did not end when Glasser left the stand, but continued throughout the trial. The jury who had obvious difficulty in determining the truthfulness of Glasser, had before them, not only the testimony of both Glassers, supporting one another, but also the argument of the Assistant lending credence to their false inheritance story.

(5) The pollution even affected the judge's charge. Without knowledge of Glasser's perjured testimony, the trial judge, although not intentionally, did mislead the jury. The judge charged:

> "For instance, with respect to Glasser, the defendants have suggested two possible motives: one, that he bears a grudge against the defendants and is using his grant of immunity as a shield behind which to 'get them'; and/or, second, that Glasser and other witnesses, faced with possible criminal prosecution, have exchanged testimony which they think the government wants to hear, in return for immunity with respect to their own crimes.
>
> The government counters with the fact that witnesses testifying under immunity face the same risk of a perjury prosecution should they give false testimony, just as any other witness at this trial, and, in fact, that the purpose of a grant of immunity is to encourage otherwise reluctant witnesses to testify truthfully. It is for you, and you alone, to assess the motives of the witnesses in this case" (A. 671a).

Had the true facts been known, the trial judge would have never charged in that manner. At least, had the fact of perjury been known prior to the charge, the trial court would never have lent support to Glasser's testimony, as was done when the Court charged that Glasser had trans-

actional immunity, which is meant to encourage an otherwise reluctant witness to tell the truth, and which also meant he could not be prosecuted for any crimes, including the acceptance of payoffs from manufacturers, except for that of perjury. Following a charge of that nature any juror would have seriously doubted whether Glasser would perjure himself when he couldn't be prosecuted for any of the offenses he was testifying about. This doubt, or consideration, raised in the charge, that Glasser would not commit the one crime he could have been prosecuted for, perjury, would not have been justified if the true facts were known. The Glassers, through their perjury, tainted the entire case.

Secondly, a correct charge, which the jury should have received in this case if truth had been known, would have been along the lines that you have heard all of Glasser testimony; he has perjured himself in material respects, it is for you, the jury, to either reject all of his testimony, or accept those portions you believe truthful. Glasser's non-disclosure of his perjury, until after the trial, successfully placed the appellants in the position of not being able to obtain a true jury consideration of all the issues.

(6) While the Glassers have not as yet formally admitted it, it is obvious they lied as to their testimony about throwing out all of their income tax returns, bank books and other documents, because when they moved to Florida they were too heavy and burdensome to bother to ship (A. 164a), or as his wife testified she didn't want to carry excess baggage (A. 182a). Glasser, over the years, has engaged in tax evasion. His tax records would reflect this evasion, and the destruction of these records was intentional. They mislead the jury when they testified otherwise, and, in determining whether to rely on their testimony to convict Hoff or Lageoles, this intentional destruction of documents may have been of such significance as to cause a jury to not accept their testimony. Their lies prevented the appellants from receiving such consideration.

All of this perjury by the only government witness involving Hoff and Lageoles requires a reversal of their convictions. While only the liberty of the appellant Hoff is at stake, both appellants have been disgraced, will be forced out of the labor movement to which they have devoted their lives, plus the untold hardship on their families. This case should not reduce itself, as apparently the government will try to do, by the government's efforts to lay the blame for not uncovering Glasser's perjury at the feet of defense counsel. The government apparently will argue that defense counsel did so much, and went so far with regard to serving subpoenas, that the defense should have gone further and faster to uncover this fraud. This argument overlooks the fact that defense counsel did all they could, as spelled out in the accompanying Stofsky-Gold brief, and much more than defense counsel ordinarily do in the defense of their clients. Moreover, this argument overlooks the government's responsibilities to insure the accused obtain a fair trial, and we join with co-appellants in their argument the government failed to meet their responsibilities as set forth in *Brady* v. *Maryland,* 373 U.S. 83 (1963). We also agree with the holding of *United States* v. *Zborowski,* 271 F.2d 661, 668 (2d Cir. 1959) as follows:

> "The prosecutor must be vigilant to see to it that full disclosure is made at trial of whatever may be in his possession which bears in any material degree on the charge for which a defendant is tried. In the long run it is more important that the government disclose the truth so that justice may be done than that some advantage might accrue to the prosecution toward ensuring a conviction" (citation omitted). See also, *United States* v. *Keogh,* 391 F.2d 138, (2d Cir. 1968).

This argument by the Government also overlooks the fact that Hoff and Lageoles stand convicted on testimony offered by the government, and these convictions are the

result of a tainted, polluted trial, and rest on false testimony. Such a conviction cannot stand, and as held by the United States Supreme Court:

> "The dignity of the United States government will not permit the conviction of any person on tainted testimony. This conviction is tainted, and there can be no other just result than to accord petitioners a new trial." *Mesarosh* v. *United States,* 352 U.S. 1, 7 (1956).

POINT II

The Trial Judge erred in denying the motion for a new trial.

Following the trial, a motion was made by defense counsel, based on the newly discovered evidence, pointing to both of the Glassers' perjury on material matters. The trial court denied the motion on grounds that are not applicable, and are erroneous, when applied to convictions of the appellants Hoff and Lageoles. This is particularly true where the court relies on the supposed corroboration of the witness Glasser through reference to the testimony of other manufacturers. This so-called corroboration did not in any way support Glasser's testimony regarding payments to either Hoff or Lageoles.

Before reaching that issue, a general issue underlying the court's entire decision should be considered. The opinion is based on the total acceptance of what Glasser has related to the Assistant United States Attorney during May 1974, as being completely true (A. 797a, 808a). There is absolutely no justification for this assumption. It is admitted by the government, and the trial record points out, that Glasser is a perjurer, as well as a common criminal as described previously. In this case he lied repeatedly, and obviously counselled his wife to do the

same. For the trial court, as well as the government, to now rely on his explanation, which is, no doubt, contrived to avoid personal tax consequences, is baseless. Glasser has not been subjected to any type of cross-examination, and considering his previous perjury, none of his recent explanations can be given any credence at all. Had the trial court considered this motion under a proper basic assumption about Glasser's May 1974 explanations, that is, he is a perjurer as to material matters, and his testimony, without being subjected to rigorous cross-examination is untrustworthy, then the court's opinion would have necessarily reached a contrary decision.

The trial judge erred further when in a series of speculative opinions he indicated that defense counsel are indeed fortunate he lied in not telling the full story because it would have further implicated the appellants (A. 797a). Once Glasser testified as he did, then any cross-examination which could have exposed the facts as they actually were, would have destroyed his credibility. It is vital to recognize this with respect to Hoff and Lageoles who were convicted on his testimony.

Further, when the court states the defendants do not seriously argue that the perjury went to anything but collateral matters (A. 803a), it fails to take into account the fact Hoff and Lageoles were convicted solely on Glasser's word. His perjury went to material matters as outlined above in discussing the Glasser's perjury and the effect it had on the entire trial.

The basis for the trial court's decision is that ". . . several factors lead this court to conclude that this evidence would not have destroyed Glasser to the extent that the verdict of the jury would have been different" (A. 804a). The court then cites those factors. First, the jury may well have disbelieved Glasser about the source

of the $120,000.00 as coming from the inheritance. Unfortunately, for the appellants, aside from the probate record, there wasn't much to use to discredit Glasser. Glasser testified, under oath, was corroborated by the sworn testimony of his wife, and the Assistant United States Attorney in his summation cited above, lent his support to the inheritance theory. Lastly, the court in its charge, as previously cited, indicated to the jury the purpose of providing Glasser with transactional immunity was to get him to testify truthfully. In the face of such a record, to now rule that ". . . it must have demonstrated . . ." to the jury ". . . that Glasser had not told the truth about the source of the $120,000" (A. 805a), is certainly groundless.

The other factors the trial judge relied on was that ". . . the jury had totally independent evidence to support Glasser's story which would have remained unsullied. Two manufacturers had testified as to direct payments made to some of these defendants. One manufacturer had testified that he gave money to Glasser with the understanding that it was going to union officials" (A. 805a). None of this corroboration went to support Glasser's testimony that he paid off Hoff or Lageoles. The corroboration the court refers to is the testimony of Daniel Grossman and Walter Stiel about direct payments, but these witnesses did not refer to the appellants Hoff and Lageoles. Also, while Daniel Grossman did testify about meeting Hoff and discussing union business with him, it must be recalled that the jury, when it weighed its verdict as to Hoff, and whether he conspired to violate Section 1962, Title 18, United States Code, found Hoff not guilty. Obviously, since the only way the jury could convict under this statute, was to consider the two alleged Grossman payments made after the enactment of the statute on October 15, 1970, and then determine who conspired to cause these payments. To reach a verdict, the jury necessarily considered Hoff's conversa-

tion and meetings. They rejected these events as being conspiratorial and exonerated Hoff. Thus, Grossman's testimony, as well as that of Stiel, does not corroborate anything with regard to Hoff or Lageoles.

The court's reliance, on the one manufacturer who testified he gave money to Glasser with the understanding that it was going to union officials, is misplaced with regard to appellants Hoff and Lageoles. The court refers to the testimony of Daniel Ginsberg in this instance, but it must be conceded that Ginsberg is not testifying as to any direct knowledge of whether any payoffs were made, but simply what Glasser had said to him on one occasion.

Next, the trial court relies on the testimony of Harry Jaffee, a former union official, that he accepted $100.00 from Glasser. The appellants rely on the argument in the accompanying Stofsky-Gold brief that this testimony was improperly admitted. This payment was not a part of any conspiracy allegedly involving these appellants, and is not corroborative of anything in this case. The Court's reference to ". . . the small and tightly circumscribed fur industry from which they might well have reasoned that the story Glasser told made sense . . ." is, at best, speculative in nature.

In footnote four of the court's opinion, not only is the court's total acceptance of Glasser's explanation of May 1974 demonstrated, but also, the limited view expressed about the importance of cross-examination which, up to this point, has been regarded as most effective protective device available to an accused during a trial. The court states that in regard to the May 1974 explanation "Glasser's present explanation renders the new evidence worthless, as a practical matter, at any retrial. The new evidence could have been used with maximum impact only at the past trial" (A. 808a). Considering what has occurred since Glasser first took the stand, and on to the present date,

even without further defense preparation for a new trial, this new evidence should convince any jury Glasser is not to be believed. A lawyer, equipped with reasonable skills in cross-examining witnesses, has before him the material to thoroughly discredit this witness. The examiner has at his disposal, after Glasser testifies on direct, in any new trial, many material areas of examination. The fact Glasser lied under oath previously, and the fact the lies went to material matters involving how he got his money, how much he got, and what he did with it. The lies would cover every aspect of his testimony during the first trial. A jury would have to be convinced of one thing, the man is a liar. Next, the jury would learn of all of the misconduct of the witness. This would include not only perjury, but suborning his wife's perjury; the fact he is a shake-down artist on a major scale; his criminal acts of tax evasion; his civil tax cheating; the now apparent intentional destruction of all of his records; as well as being a man totally devoid of character in that he dishonored his position with the Association for many years. In a situation where a conviction depends on the credibility given to a witness by the jury, as it does in this instance, where the only witness involving the appellants Hoff and Lageoles is Glasser, such an examination must raise serious issues as to whether Glasser's testimony can be accepted. This jury had difficulty with Glasser regarding alleged payments to Hoff and Lageoles without considering the above factors. This tainted conviction, based on the perjurious testimony of Jack Glasser, of the appellants Hoff and Lageoles, should not be upheld.

CONCLUSION

For all of the above reasons, it is respectfully submitted that the convictions of appellants Charles Hoff and Clifford Lageoles should be reversed.

Respectfully submitted,

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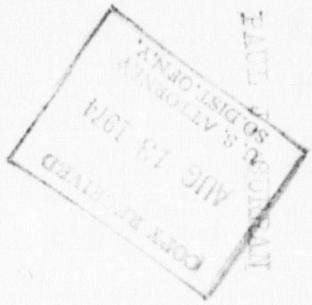

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